IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1317 OF 2004

1.Baliram Lalsa Yadav
2.Fauzdar Lalsa Yadav ...Appellants

Vs.

Kanta Jeetbandhan Yadav ...Respondent

Mr.P.R.Arjunwadkar for the Appellants

CORAM: A.S.OKA,J.
DATE : MARCH 3,2005.

P.C.:

1. On 3rd February 2005, a statement was made by the learned Advocate for the Appellants that the Appellants desire to pray for longer time to vacate the suit premises. Therefore, the Advocate for the Appellants was directed to serve private notice on the Respondent. The private notice was made returnable on 24th February 2005. On 24th February 2005 Advocate for the Appellants made a statement that due to certain reasons he could not serve the private notice. Therefore, time of one week was granted to enable him to do so. Today, when the matter was called out the Advocate for Appellants stated that notice could not be served on the Respondents. Office noting shows that Affidavit of service is not filed by the Appellants.

2. On 3rd February 2005 the Appeal was fully argued for admission and it was adjourned only because the Appellants sought time.

3. The Second Appeal is preferred by the original Plaintiffs. The counter claim for possession made by the Respondent has been decreed by the Appellate Court and the Appellants have been directed to hand over vacant possession of the room in dispute.

4. The Appellate Court on appreciation of oral and documentary evidence on record has held that the Appellants were in possession only on the basis of the permission granted by the Respondent-defendant. After the Appellants failed to establish that they have any right, title or interest in the suit premises, the decree for possession has been passed. The Appellate Court on consideration of evidence on record has held that the Appellants were gratuitous licensees of the Respondent. The said finding is based on appreciation of oral and documentary evidence on record. Though points for determination are not framed, the Appellate Court has elaborately considered the evidence on all the issues and has recorded findings.

5. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

6. At this stage the learned Advocate for the Appellant seeks time to vacate. Notwithstanding the dismissal of the Appeal the decree for possession shall not be executed for a period of six months from today subject to the Appellants filing

usual undertaking to vacate the suit premises within three weeks from today in this Court. If undertaking is not filed within stipulated time, the decree will become executable forthwith.

JUDGE.